IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 7TH NOVEMBER 2006 / 16TH KARTHIKA 1928

RSA.No. 704 of 2006()

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AS.147/2005 & 179/2005 of DISTRICT COURT, KOTTAYAM
OS.263/1981 of MUNSIFF COURT, PALA

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APPELLANTS/APPELLANTS/DEFENDANTS 5 TO 8

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1. HAJARA BEEVI, AGED 68,
RESIDING IN PUTHUVEETTIL FROM ENAMTHURUTHU,
IRUMPOOZHIKKARA MURI, VADAKKEMURI VILLAGE,
VAIKOM TALUK.

2. AISHA @ AMZATH, AGED 33, D/O. ALI,
RESIDING IN PUTHUVEETTIL FROM ENAMTHURUTHU,
IRUMPOOZHIKKARA MURI, VADAKKEMURI VILLAGE,
VAIKOM TALUK.

3. AKBER, AGED 36, S/O. ALI,
RESIDING IN PUTHUVEETTIL FROM ENAMTHURUTHU,
IRUMPOOZHIKKARA MURI, VADAKKEMURI VILLAGE,
VAIKOM TALUK.

4. AREEFA, AGED 33, D/O. ALI,
RESIDING IN PUTHUVEETTIL FROM ENAMTHURUTHU,
IRUMPOOZHIKKARA MURI, VADAKKEMURI VILLAGE,
VAIKOM TALUK.

BY ADV. SRI.M.NARENDRA KUMAR
SMT.LEENA KRISHNAN

RESPONDENTS: RESPONDENTS/PLAINTIFFS & DEFENDANTS 2 AND 3

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1. AHAMMEDKUNJU MAMMATHAN,
RESIDING AT NILAVANCHERIL, KIZHAKKUMCHERRY,
VALLAKOM MURI, VAIKOM NADUVILE VILLAGE. (DIED)

2. HYDERALI, S/O. MAMMATHAN,
RESIDING AT NILAVANCHERRIL, KIZHAKKUMCHERRY,
VALLAKOM MURI, VAIKOM NADUVILE VILLAGE.

3. SUBAIDA, D/O. MAMMATHAN,
RESIDING AT NILAVANCHERRIL, KIZHAKKUMCHERRY,
VALLAKOM MURI, VAIKOM NADUVILE VILLAGE.

4. KUNJUMOHAMMED ABDUL AZEEZ,
S/O. KUNJUMOHAMMED, RESIDING IN PUTHUVEETTIL
FROM ENAMTHURUTHU, IRUMPOOZHIKKARA MURI,
VADAKKEMURI VILLAGE, VAIKOM TALUK.

5. SUHARA BEEVI, D/O. KUNJUMOHAMMED,
RESIDING IN KOCHITHARAYIL FROM ENAMTHURUTHU,
IRUMPOOZHIKKARA MURI, VADAKKEMURI VILLAGE,
VAIKOM TALUK.

6. FATHIMA BEEVI, AGED 64, W/O. ABDUL
AZEEZ, RESIDING IN PUTHUVEETTIL FROM ENAMTHURUTHU,
IRUMPOOZHIKARA MURI, VADAKKEMURI VILLAGE,
VAIKOM TALUK.

7. ABDUL KHADER, AGED 40,
S/O. ABDUL AZEEZ, -DO- -DO-

8. ABUBECKER P.A., AGED 38,
S/O. ABDUL AZEEZ, -DO- -DO-

9. SAINABA BEEVI P.A., AGED 35,
D/O. ABDUL AZEEZ, KUTTICKAL ARUPATHIL HOUSE,
KILIROOR P.O., ILLICKAL, KOTTAYAM.

10. SAJITHA BEEVI P.A., AGED 33,
D/O. ABDUL AZEEZ, PULLISSERIL HOUSE,
KANNAMLA P.O., THUMARAMPARA, ERUMELI.

11. KUNJUMOHAMMED P.A., AGED 31,
S/O. ABDUL AZEEZ, PUTHUVEETTIL HOUSE,
IRUMPOOZHIKKARA, UDAYANAPURAM P.O.,
VADAKKEMURI VILLAGE, VAIKOM.

12. KUNJUMOL P.A., AGED 28, D/O. ABDUL
AZEEZ, HOUSE NO.23/1791, PHAHAD MANZIL,
BINNY ROAD, PALLURUTHI, KOCHI-682 006.

13. ZEENATH P.A., AGED 24, D/O. ABDUL AZEEZ,
ARITHARATH HOUSE, NANADAM P.O., VAIKOM.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 07/11/2006, ALONG WITH RSA NO.706 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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R.S.A.Nos.704/06 &706/06

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DATED THIS THE 7th DAY OF NOVEMBER, 2006

**J U D G M E N T**

The common appellants in these appeals were defendants 5 to 8 in O.S.No.263/81 and defendants 4 to 7 in O.S.No.142/82 on the file of Munsiff's Court, Pala. R.S.A.No.704/06 arises from O.S.No.263/81 and R.S.A.No.706/06 arises from O.S.No.142/82. O.S.No.263/81 which was treated as the leading case was one for redemption of two items of properties. Plaint schedule item No.1 is admeasuring 27 cents and plaint schedule item No.2 is admeasuring 87 cents. Plaint schedule item No.1 is part of plaint schedule item No.2. O.S.No.142/82 was a suit for injunction in respect of 27 cents which is plaint schedule item No.1 in O.S.No.263/81. The larger holding, viz; 87 cents belonged to one Ahammed Kunju. He had mortgaged the property to one Kunjan Kesavan in the year 1937 after receiving a mortgage money of Rs.540/-. The period of mortgage was three years. Ahammed Kunju had also executed a superior mortgage for Rs.567 to his own daughter Aisha Umma as per Exhibit A1 deed of the year 1944. Aisha Umma also was given a right to redeem the earlier mortgage. O.S.No.1022/1120 ME was a suit filed by Aisha Umma for redemption of the mortgage against Kunjan Kesavan, the mortgagee.

That suit was decreed and Aisha Umma got possession of the property in the year 1954. O.S.No.854/1121 ME was a suit for partition filed by the son of Aisha Umma. In that suit, Aisha Umma, the present original plaintiff, etc. were parties. Equity of redemption over plaint schedule item No.1 in O.S.No. 263/81, that is 27 cents was allotted to the present original plaintiff who was the second defendant in O.S.No.840/1121 ME. Exhibit A4 is the final decree. It was thereafter that the present suit was filed.

2. The suit is resisted on two grounds. One that it was barred by limitation and the second that the appellants were entitled to the benefit of section 4A(1)(a) of the Kerala Land Reforms Act, 1964. The trial court had originally dismissed the suit on the ground of limitation. The matter was taken up in appeal by the plaintiff and the lower appellate court took the view that limitation starts running only from the date of possession, viz; 1954 and so reckoned and the suit was not barred since the plaintiff had 30 years' time under Article 62 of the Limitation Act. Even though the judgment of the lower appellate court was challenged before this court in R.S.A.No.184/98, this court had upheld the findings of the lower appellate court to the effect that the suit was not barred by limitation. Thereafter, the matter was considered on merits by the trial court. The issue regarding the plea of tenancy under section 4A(1)(a) of the Kerala Land Reforms Act was

referred to the competent Land Tribunal which took the view that the appellants are not entitled to fixity of tenure under section 4A(1)(a) of the Kerala Land Reforms Act and returned a finding to that effect. Incorporating the said finding, the trial court passed a preliminary decree. The matter was taken up in appeal by the appellants. The lower appellate court has also confirmed the finding of the Land Tribunal. Since the 50 years' period specified under section 4A(1)(a) of the Kerala Land Reforms Act had not elapsed as on 1.1.1970, the appellants were held not entitled to claim the benefit thereunder. O.S.No.142/82 filed for injunction against committing waste was also concurrently decreed by the courts below in respect of the 27 cents shown in plaint schedule item No.1 in O.S.No. 263/81. Such being the position, I am not inclined to hold that any question law much less any substantial question of law arise for consideration in these second appeals which are accordingly dismissed in limine.

V.RAMKUMAR, JUDGE

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